

To: Tom Hagler/R9/USEPA/US@EPA[]
From: "Hal Candee"
Sent: Mon 6/25/2012 6:52:01 PM
Subject: when you return from vacation
hcandee@altshulerberzon.com

would be interested in your views on this somewhat confidential missive..... thanks.

From: Hal Candee
Sent: Sunday, June 24, 2012 9:39 PM
To: Letty Belin (Letty_belin@ios.doi.gov); Michael Connor (mlconnor@usbr.gov); Eileen Sobeck (Eileen_Sobeck@ios.doi.gov)
Cc: David Nawi (David_Nawi@ios.doi.gov)
Subject: Letty, Mike, Eileen: modest request re July 25th
Importance: High

Dear Letty, Mike and Eileen:

I am looking forward to our meeting with Letty & Eileen this Wed, and the larger meeting with Mike, Don, Will and others on July 12th. However, at our weekly conference call with Mark Cowin, Jerry Meral and Chuck Bonham two days ago (i.e. Friday afternoon), we learned some troubling things, which suggest we all may need some more time to ensure there is consensus when your framework is announced -- and that July 25th does not instead become the beginning of a major 4 way battle that threatens ultimate success on BDCP. One could wait to make that decision until early July, except that as of Friday, both state and federal officials were starting to announce that the July 25th date is pretty definite, so I expect people will start organizing around that unless there is some way to clarify that no firm date has been set. Here are some of the factors in play:

1. When Secretary Laird first laid out the new "breakthrough" and new "framework" to all of the NGO's (in late May), he made clear that the quid pro quo for the environmental community (in exchange for the fish agencies giving a green light to a major new facility of 9,000/15,000 cfs capacity) was a reliable, transparent, science-based decision tree that ensured that there would be no change in operations for the new facility (i.e. above the initial criteria approved by the fish agencies at the time of permitting) unless specific biological objectives were being met to ensure progress toward actual recovery. Yet even though considerable time has passed, we still do not have any new paper on that decision tree, the new governance process to ensure that science actually will govern, and the objectives that will provide the underpinning to the whole system.

2. On the other hand, the agencies appear to be backing away from the other half of the "breakthrough" -- i.e. that the water contractors have finally given up on a guaranteed minimum amount of water for export and, instead of regulatory assurances per the previous discredited BDCP approach, were prepared to accept the science-based decision tree referenced above. On Wed, Jerry Meral hosted a BDCP public meeting for 100 people, plus a much larger audience via webcast, where the State's lead consultant on the finance plan and the cost-benefit analysis showed how the key to proving a positive cost-benefit relationship was (a) providing regulatory assurances, including "no surprises", and (b) using an export range from 5.3 MAF to 5.9 MAF. When several of us objected, we discovered that (1) several top state and federal leaders on BDCP didn't even know about this presentation, (2) the attempt at invoking caveats like "this is all based on an outmoded project proposal" were completely lost on the reporters who were watching, including ACWA which described the proposal in its newsletter the next day, and (3) our understanding (from both Secretary Laird and Interior) that regulatory assurances were not part of the new framework was incorrect. Mark Cowin clarified on Friday that the contractors have not agreed to give up regulatory assurances and while he is hopeful they will ultimately endorse the new

framework, there is no agreement until the whole package is out there.

3. All of this could be managed if we all had the time to work through all of these details, review and comment on the new documents on all of these key points, meet face-to-face to make sure there is common understanding of the written federal-state proposals, try to work through any differences with other constituencies like the contractors, the Delta Counties, the fishing groups, the broader grass roots environmental community, the upstream water users (e.g. Sac Valley rice farmers), the waterfowl interests, the elected officials in Sacramento, and the elected officials in DC. But that isn't the plan that Governor Brown has put us on as far as I can tell. Instead, we are being told everything must be rushed to meet an arbitrary date in July that doesn't appear to be tied to anything in particular. Between numerous vacations in all constituencies, the inevitable delays reaching consensus just among the 5 agencies, and the huge and complex issues at stake, it now appears almost impossible to do what is needed by July 25th. My fear is that the potential result will be a huge step backward for everyone, where all constituencies, especially the contractors and the Delta interests, will feel the need to harden their public positions due to the public announcement, and the important work of building consensus around your promising new framework will be very seriously undermined.

Sorry for this lengthy email: I made a shorter pitch to Mark Cowin, Jerry Meral, Chuck Bonham and Karla Nemeth along these lines on Friday. On behalf of Defenders of Wildlife, I urge you to postpone the July 25th announcement and give us all the additional weeks (or perhaps the extra month or more) that is necessary to work through your still unwritten new framework for concluding the 6-year BDCP process. Thank you for considering this request.

Hal

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